Supreme Court, U.S.
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Nos. 97-296, 97-454 and 97-464

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1996

UNITED STATES OF AMERICA (#97-454) and MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY (# 97-296),
Petitioners
v.
CPC INTERNATIONAL, INC., et al.
Respondents
and
CPC INTERNATIONAL, INC. (# 97-464),
Cross-Petitioner
v.
AEROJET-GENERAL CORPORATION, et al.,
Respondents

On Petitions for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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BRIEF OF AEROJET-GENERAL CORPORATION, CORDOVA CHEMICAL COMPANY OF MICHIGAN AND CORDOVA CHEMICAL COMPANY OPPOSING PETITIONS

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RULE 29.6 STATEMENT

The parent company of Cordova Chemical Company of Michigan is Cordova Chemical Company. The parent company of Cordova Chemical Company is Aerojet-General Corporation. The parent company of Aerojet-General Corporation is GenCorp, a publicly traded company. The filing parties do not have non-wholly-owned subsidiaries, but Aerojet-General Corporation does hold less than 1% of the stock of Megabar Explosives Corp., a Utah corporation.

SUPPLEMENTAL STATEMENT OF THE CASE

This case involves the allocation of responsibility for pollution caused by prior owners and operators of a site now owned by Cordova Chemical Company of Michigan, a subsidiary of Cordova Chemical Company, which is in turn a subsidiary of Aerojet-General Corporation ("Aerojet"). Neither Aerojet nor any of its subsidiaries caused or contributed to any contamination at the site. All of the contaminants in the soil and groundwater of the site were deposited between 1957 and 1977, before Aerojet or its subsidiaries had any involvement whatsoever with the site.

Neither Aerojet nor its subsidiaries should bear any liability for the contamination caused by others at the site. The district court recognized that Aerojet's subsidiaries operated in an environmentally safe manner, and found as a matter of fact under Fed. R. Civ. P. 52 that:

> During their period of operations, Cordova/Michigan and Cordova/California neither buried waste nor dumped it onto the ground. No chemical waste was disposed into the unlined lagoons that had been used during the Ott I and Ott II eras. Before beginning chemical manufacturing, Cordova/Michigan repaired the equalization basin and chemical sewer system. When operating, Cordova/Michigan discharged chemical waste through off-site disposal or to a sewer that flowed to the Muskegon County treatment facility.

CPC Int'l Inc. v. Aerojet-General Corp., 777 F. Supp. 549, 556 (W.D. Mich. 1991) (U.S. Pet. App. 62a). The Court of Appeals noted the finding, *United States v. Cordova Chemical Co. of*

Michigan, 113 F.3d 572, 576-77 (6th Cir. 1997) (*en banc*) (U.S. Pet. App. 6a), and no party contested it on appeal. As the Court of Appeals stated: "[T]he release of hazardous substances appears to have been *caused* solely by the predecessors of [Aerojet and its subsidiaries]." *Id.* at 583, U.S. Pet. App. 23a-24a. Aerojet itself has never owned this site or conducted its operations there.

Aerojet and its subsidiaries initially became involved with the site in 1977 when Cordova Chemical Company purchased it from a federal bankruptcy trustee under a Stipulation and Consent Order with the State of Michigan. Under the Stipulation and Consent Order, Cordova Chemical Company agreed to contribute $600,000 to the State's cleanup efforts at the site, and the State of Michigan promised to release Cordova and hold it harmless from all potential liability for pollution left by the site's prior owners:

> 6. It is anticipated that said $600,000 will be sufficient to reimburse the Department of Natural Resources fully for all costs and expenses incurred by it in connection with its obligations hereunder and, in addition, to provide at least $100,000 towards the provision of an alternative water supply system to serve residents and commercial establishments whose water supply wells are or may become affected by the groundwater contaminants emanating from the Story Chemical Corporation property. The Cordova Chemical Company shall not have any liability in the event that said $600,000 is not in fact sufficient for the intended purposes nor shall it have any responsibility whatsoever in connection with the provision of any water supply system or potable water pending availability of an

> acceptable water supply system to said residents and commercial establishments.
>
> Cordova Chemical Company shall not have any responsibility or liability in connection with any other corrective actions which the Department of Natural Resources or any other governmental agency may hereafter deem necessary or advisable in connection with the contamination emanating from the Story Chemical Corporation property, including, without limitation, the creation, maintenance and operation of any purge wells.
>
> . . .
>
> 8. Compliance with this Consent Order shall constitute full satisfaction of all relief, civil or administrative, which might have been, or which otherwise might be obtained against Cordova Chemical Company for any contamination of groundwater or other pollution, injury, or damage, to the environment or otherwise, caused by acts or omissions of Story Chemical Corporation facilities, which acts, omissions or operations occurred prior to the effective date of this Consent Order, whether the contamination, pollution, injury or damage occurs prior to or after the effective date hereof.

See CPC, 777 F. Supp. at 565 (U.S. Pet. App. 86a-87a) (quoting from the Stipulation and Consent Order). Without this promise from the State of Michigan, Cordova Chemical Company would not have acquired the site.

The Michigan Court of Appeals has ruled that the Stipulation and Consent Order obligates the State to bear financial responsibility for any CERCLA liability assigned to Aerojet and its subsidiaries. *Cordova Chemical Co. v. Department of Natural Resources*, 212 Mich. App. 144, 536 N.W.2d 860 (1995). The Michigan Supreme Court has denied the State's request for leave to appeal. *See Cordova Chemical Co. v. State, Michigan Department of Natural Resources*, 453 Mich. 899, 554 N.W.2d 319 (1996). Accordingly, the question presented by the Petition of the United States and the Conditional Cross-Petition of CPC International is, for Aerojet, of primarily academic interest because ultimate financial responsibility for any CERCLA liability assigned to Aerojet will lie with the State.[1]

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[1] The State of Michigan's Petition seeks certiorari only with respect to the claims against CPC International, and not with respect to the claims against Aerojet and its subsidiaries. The State's Petition recognizes the reality that only CPC International, and not Aerojet, has a significant enough financial interest in the question to present the adversity necessary for proper presentation of the issue in this Court. Indeed, Aerojet's lack of a significant financial interest in the outcome of the claims against it may well lead this Court to deny the Petitions as moot insofar as they involve the claims against Aerojet. *Cf.* Stern, Gressman, Shapiro & Geller, *Supreme Court Practice*, § 18.2 at 710 (7th ed. 1993) ("If the controversy becomes academic by reason of changed circumstances, the Court's jurisdiction ceases and the case becomes moot."); 13A C. Wright, A. Miller & E. Cooper, Federal Practice and Procedure § 3533.2, at 241 n. 28 (2d ed. 1984) (collecting cases in which relief granted by another tribunal mooted an action).

REASONS FOR DENYING THE PETITIONS

1. This case does not present a sufficiently important question of federal law to warrant the attention and resources of the Court. The appropriate standard for determining the liability of a parent corporation as an "operator" under § 107(a)(2) of CERCLA is not an issue likely to arise with great frequency in the federal courts in the future. As the Petitioner acknowledges, "the United States does not routinely seek to hold parent corporations liable for conditions at a subsidiary's facility." U.S. Pet. at 26-27. Indeed, the courts of appeals have noted that it is only in unusual cases that a parent corporation may be subjected to such liability. "[I]t is obviously not the usual case that the parent of a wholly owned subsidiary is an operator of the subsidiary." *United States v. Kayser-Roth Corp.*, 910 F.2d 24, 27 (1st Cir. 1990); *see also Jacksonville Elec. Auth. v. Bernuth Corp.*, 996 F.2d 1107 (11th Cir. 1993) (same). Moreover, the frequency of such cases will be further minimized as the overall number of CERCLA cases in the federal courts decreases along with a decrease in the number of Superfund sites.[2]

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[2] The number of sites added annually to the National Priorities List ("NPL") has been steadily decreasing since the NPL's inception in 1983. From 1983-1990, the United States Environmental Protection Agency added an average of over 151 sites per year to the NPL. From 1991-1997, the annual average has declined to approximately 20. The following graph summarizes the annual data:

Even to the extent that such cases do continue to arise, existing decisions of the courts of appeals already provide a consistent answer to the abstract question presented by the Petitioners. The United States frames the question presented for review as "[w]hether a corporation that actively participated in, and exercised control over, the operations of a subsidiary may be held liable under CERCLA as an operator of the subsidiary's

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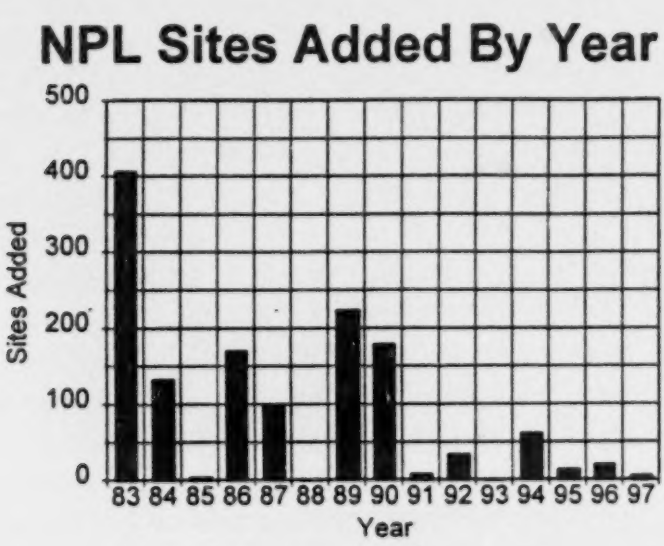

See Office of Solid Waste and Emergency Response, U.S. Environmental Protection Agency, Pub. No. 9320.7-061, Supplementary Materials: National Priorities List, Proposed Rule and Final Rule 25-29 (April 1997); 62 Fed. Reg. 50,442 (1997) (adding six sites to NPL in September of 1997). The trend is likely to continue. *See e.g.*, 114 Cong. Rec. S11336-01 (1995) (remarks of Senator Bond) (noting that the EPA's budget is decreasing and that Superfund will take its share of the cuts and thus needs to prioritize among NPL sites); *see also* S.8, 105th Cong., 1st Sess. § 802 (1997) (pending Superfund reauthorization bill which would cap the number of new NPL sites, decreasing to no more than 10 per year after the year 2000).

facility." U.S. Pet. at (I). Respondents respectfully submit that a careful review of the court of appeals decisions cited by the United States (U.S. Pet. at 22-26) reveals that all the circuits would answer the abstract question presented in the affirmative.[3] It is true that the language and theory used to apply the abstract principle to the particular facts of a case may vary from circuit to

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[3] The United States acknowledges this with respect to eight of the eleven circuits to address the issue. U.S. Pet. at 22-25 (citing holdings from the First, Second, Third and Eleventh Circuits and *dicta* from the Seventh, Eighth, Ninth and Tenth Circuits). In addition, the Sixth Circuit in this case recognized the validity of a direct theory of operator liability for parent corporations and specifically rejected the dissent's attempt to characterize the decision as holding otherwise. *See United States v. Cordova Chemical Co. of Michigan*, 113 F.3d 572, 579, 581 n. 5 (6th Cir. 1997) (*en banc*) (U.S. Pet App. 12a, 17a-18a). As the United States notes (U.S. Pet. at 25-26), it is not entirely clear how the Fifth Circuit would articulate its position on this point, but it is clear that the Fifth Circuit, like the other circuits, would impose CERCLA liability on a corporation whose active participation in and control over a subsidiary's operations was sufficient on the facts of a particular case to warrant disregard of the corporate form under applicable veil-piercing principles. Accordingly, the Fifth Circuit would also answer the question framed by the United States in the affirmative on the facts of an appropriate case. The Fourth Circuit, according to the United States, "has adopted a more expansive standard of operator liability," U.S. Pet. at 25, and so would obviously answer the abstract question framed by the United States in the affirmative. The District of Columbia Circuit has not addressed the issue and is unlikely to have the opportunity given the concentration of federally owned property and the absence of significant industrial property in the District. *See* 42 U.S.C. § 9613(b) (specifying venue for cost recovery actions in districts where the release of hazardous substances occurred or where the defendant resides, may be found, or has its principal office). There are no District of Columbia sites on the NPL. 40 C.F.R. § 300, Appendix B (1997).

circuit, but there does not appear to be any dispute among the circuits over the proposition that a company may under some circumstances bear liability for a subsidiary's facility.[4] This Court

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[4] Contrary to the claim of the United States (U.S. Pet. at 25), the Fourth Circuit's decision in *Nurad, Inc. v. William E. Hooper & Sons Co.*, 966 F.2d 837, *cert. denied*, 506 U.S. 940 (1992), does not deepen the claimed conflict among the circuits over the treatment of parent companies under CERCLA § 107(a)(2). *Nurad* does not even deal with the operator liability of parent companies under CERCLA. The relevant portion of *Nurad* deals with the alleged operator liability of former tenants of a contaminated site and former officers of the corporate owner. *Id.* at 842-844. Moreover, in *Nurad*, the Fourth Circuit declined to impose operator liability on the facts of the case under an "authority to control" test of operator liability. Accordingly, any dispute over whether the appropriate test was "authority to control" or "actual control" was academic since neither test supported a finding of liability. *See Nurad*, 966 F.2d at 842 (affirming summary judgment for the former tenant based on the absence of authority to control waste disposal, and further noting the district court finding that the former tenants "never actively participated in the disposal of hazardous substances at the site").

The only other Fourth Circuit decision to address any form of CERCLA operator liability is *United States v. Carolina Transformer Co., Inc.*, 978 F.2d 832 (1992), a case dealing with the liability of officers and directors of a corporate owner and operator. (One of the officers and directors was also the sole shareholder of the company, but the court declined to analyze liability on that basis. *Id.* at 836.) *Carolina Transformer* articulated its decision using an "authority to control" standard, *id.* at 836-837, but the facts found by the trial court and referenced by the Court of Appeals may well have supported the imposition of liability on other grounds. Both individual defendants admitted they were responsible for what happened at the site, and one actually admitted that he "operated or otherwise controlled operations" at the site. *Id.* at 837. The district court findings referenced by the Court of Appeals, *id.*,

should not spend its time as linguistic police requiring that the circuits rigidly adhere to a particular verbal formula.

The United States suggests that the *en banc* decision of the Sixth Circuit is out of step with other court of appeals decisions[5] in its focus on the traditional corporate law concept of derivative liability through veil-piercing as a basis for assigning liability to a parent corporation. But the Sixth Circuit expressly refused to reduce parent corporation liability under CERCLA to a veil-piercing question in every case. To the contrary, just like the decisions of other courts of appeals (*see* U.S. Pet. at 22-25), the Sixth Circuit recognizes the possibility of direct operator liability for a parent company. In fact, the Sixth Circuit specifically stated at two points in its opinion that a parent corporation can be held directly liable as an operator where it "actually" or "directly" operated the facility at issue, either independently of the subsidiary

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detail more nefarious conduct including surreptitious operation of a subsidiary as a division of Carolina Transformer, a fraudulent attempt to divest Carolina Transformer of assets, and destruction of corporate records. *United States v. Carolina Transformer Co., Inc.*, 739 F. Supp. 1030, 1034-1035 (E.D.N.C. 1989). In such a case, the articulation of an "authority to control" standard was certainly not the controlling factor in the decision. Indeed, the United States says it does not support an "authority to control" standard, U.S. Pet. at 25, and so it would certainly not have brought the *Carolina Transformer* case in the absence of facts supporting liability on other grounds.

[5] U.S. Pet. at 22-25 (citing *United States v. Kayser-Roth Corp.*, 910 F.2d 24 (1st Cir. 1990); *Schiavone v. Pearce*, 79 F.3d 248 (2d Cir. 1996); *Lansford-Coaldale Joint Water Auth. v. Tonolli Corp.*, 4 F.3d 1209 (3d Cir. 1993); *Jacksonville Elec. Auth. v. Bernuth*, 996 F.2d 1107 (11th Cir. 1993)).

or as an actual co-operator alongside the subsidiary. *United States v. Cordova Chemical Co. of Michigan*, 113 F.3d 572, 579, 581 (6th Cir. 1997) (*en banc*) (U.S. Pet. App. 12a, 17a-18a). Moreover, the court's majority took the dissent to task for suggesting that it was holding otherwise, stating that "the dissent's characterization of our opinion as holding 'that a parent cannot, as a matter of law, be held directly liable under 42 U.S.C. § 9607(a)(2) as an "operator" of a facility owned by its subsidiary corporation' is mistaken." *Id.* at 581 n.5 (U.S. Pet. App. 17a). The Sixth Circuit simply did not find such a direct liability theory implicated by the claims and facts of this particular case. *Id.* This Court should not spend its time poring over a particular factual application of accepted legal principles.

In any event, the distinction Petitioner attempts to create between a standard based upon derivative liability through veil-piercing and one of direct liability is more theoretical than real. Commentators who have compared cases relying upon the traditional veil-piercing criteria with those purporting to apply a direct liability standard have found no difference in the result of the cases based upon this difference in approach. "[T]he liability of a parent corporation is the same regardless of whether liability is premised on traditional corporate law or direct statutory liability under CERCLA." Lynda J. Oswald & Cindy A. Schipani, *CERCLA and the "Erosion" of Traditional Corporate Law Doctrine*, 86 Nw. U. L. Rev. 259, 315 (1992); *see also* George W. Dent, *Limited Liability and Environmental Law*, 26 Wake Forest L. Rev. 151, 160 (1991) ("In theory, [direct liability] differs from liability under piercing . . . . In practice, however, the two can be hard to distinguish. The kind of participation in a CERCLA violation necessary to establish direct liability may differ little from the kind of involvement in the subsidiary's affairs

necessary to pierce the veil"). According to the commentators, "careful analysis of the fact patterns of these cases [purporting to apply a distinctly federal, direct liability standard] discloses that courts have simply held liable parties that could have been held liable under traditional corporate law doctrine." Oswald & Schipani, *supra*, at 236. Respondents respectfully submit that this Court should not devote its time to resolving an abstract question that has no real impact on the outcome of actual cases.

Because the question presented for review by the Petitioners is not frequently recurring in nature, because all the courts of appeal, including the Sixth Circuit, recognize the potential for both direct and derivative theories of liability,[6] and because the apparent difference between the direct and derivative standard of liability is of little practical import, this case does not warrant the attention and resources of this Court. Accordingly, the petitions should be denied.

2. Even if this Court decides to address the question presented by the Petitioners, it should do so only with respect to CPC International and not with respect to Aerojet. First, in Aerojet's case, unlike the case against CPC, resolution of the question presented in favor of the Petitioner should not change the outcome in favor of Aerojet. Even if Aerojet is deemed an "operator" under CERCLA § 107(a)(2), the judgment in favor of

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[6] The Fifth Circuit focused solely on derivative liability of a parent corporation through veil-piercing in *Joslyn v. T.L. James & Co.*, 893 F.2d 80 (5th Cir. 1990), but that court has more recently recognized the potential for both direct and derivative liability in the analogous case of a majority shareholder. *See Riverside Market Development Corp. v. International Building Products, Inc.*, 931 F.2d 327 (5th Cir. 1991).

Aerojet should still be sustained on other grounds. Moreover, even if Aerojet were ultimately found liable, the State of Michigan, and not Aerojet, would bear the ultimate financial burden of the ruling. *Cordova Chemical Co. v. Department of Natural Resources*, 212 Mich. App. 144, 536 N.W.2d 860 (1995). This dilutes the adversarial nature of the case against Aerojet necessary for careful adjudication of the issues. This also means that the taxpayers will bear financial responsibility for any liability ultimately imposed on Aerojet and its subsidiaries—precisely the result the United States says it seeks to avoid in bringing its Petition. U.S. Pet. at 27. Accordingly, a grant of certiorari in this case on the claims against Aerojet would not be an effective use of this Court's resources.

a. Aerojet has consistently argued that it cannot be liable under § 107(a)(2), regardless of whether it is deemed an "operator," because no disposal of hazardous substances occurred at the site during the tenure of its subsidiaries. Section 107(a)(2) imposes liability only on owners or operators "at the time of disposal of any hazardous substance." 42 U.S.C. § 9607(a)(2). Petitioners have asserted that the passive migration in groundwater of contaminants left by others amounts to "disposal." The Sixth Circuit did not have to address this issue because it held that Aerojet was not an operator.

Two courts of appeals have recently ruled, consistent with Aerojet's position, that passive migration is not "disposal" under CERCLA. *See ABB Industrial Systems Inc. v. Prime Technology, Inc.*, 120 F.3d 351 (2d Cir. 1997); *United States v CDMG Realty Co.*, 96 F.3d 706 (3d Cir. 1996). The Second Circuit succinctly summarized the numerous factors that support such a conclusion:

First, disposal is defined as "the discharge, deposit, injection, dumping, spilling, leaking, or placing" of hazardous chemicals so that they may enter the environment. 42 U.S.C. § 6903(3). None of these terms is commonly used to refer to the gradual spreading of hazardous chemicals already in the ground. *CDMG Realty Co.*, 96 F.3d at 714.

Second, current owners are liable, if, *inter alia*, there has been a "release" of hazardous substances. 42 U.S.C. § 9607(a). Unlike the definition of disposal, release is defined to include "leaching," *id.* § 9601(22), which is commonly used to describe passive migration, see *CDMG Realty Co.*, 96 F.3d at 715 & n.4 (quoting several law journals and cases). That Congress used the term leaching in the definition of release demonstrates that Congress knew that passive migration occurred but decided not to impose liability for it on prior owners. *Id.*

Third, CERCLA provides an "innocent owner" defense. *See* 42 U.S.C. §§ 9607(b)(3), 9601(35); *Westwood Pharmaceutical v. National Fuel Gas Dist. Corp.*, 964 F.2d 85, 89-91 (2d Cir. 1992). To qualify for that defense, a defendant must establish, *inter alia*, that it acquired the site "after the disposal" of hazardous chemicals. 42 U.S.C. § 9601(35)(A). If "disposal" included the gradual spreading of hazardous chemicals spilled before the defendant acquired the site, the innocent owners defense would hardly ever be available. *CDMG Realty Co.*, 96 F.3d at 716. Once hazardous chemicals are in the ground, they usually

> spread, and therefore, there would almost never be an identifiable period "after the disposal." *Id.* Congress would not intentionally create a useless defense. Thus, we interpret the word "disposal" as limited to spilling, discharging, leaking, etc., and not to passive migration. *See Id.*
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> . . . .
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> Finally, the *CDMG Realty Co.* Court reasoned that its interpretation was consistent with CERCLA policy. One of CERCLA's goals is to "force polluters to pay the cost associated with their pollution." *CDMG Realty Co.*, 96 F.3d at 717; *see also B.F. Goodrich*, 99 F.3d at 514 (CERCLA's purposes include "assuring that those responsible for any damage, environmental harm, or injury from chemical poisons bear the costs of their actions"). If a person merely controlled a site on which hazardous chemicals have spread without that person's fault, that person is not a polluter and is not one upon whom CERCLA aims to impose liability.

ABB, 120 F.3d at 358-59; *see also* Note, *The Case Against Intermediate Owner Liability Under CERCLA for Passive Migration of Hazardous Waste*, 93 Mich. L. Rev. 609 (1994).[7] Accordingly,

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[7] *But cf. Nurad, Inc. v. William E. Hooper & Sons Co.*, 966 F.2d 837 (4th Cir. 1992) (leaking from tanks that were deposited prior to the defendant's ownership constitutes "disposal" subjecting the defendant to CERCLA liability). *Nurad* did not address precisely the same question presented by the facts of this case. In *Nurad*, additional contaminants entered the environment from leaking containers. 966 F.2d at 846 (former owners held property "at a time when the mineral spirits were 'leaking' from the tanks"). In this case, all of the contaminants at issue were

even if the Sixth Circuit's "operator" analysis were reversed and Aerojet were deemed to be an operator, no liability would attach to Aerojet since the passive migration of contaminants left by others does not constitute disposal within the meaning of the statute.

b. Even if the operator liability and disposal issues were resolved against Aerojet, it would still not be subject to liability because Aerojet and its subsidiaries qualify for the third party defense available under § 107(b)(3) of CERCLA for parties that neither caused the contamination nor had a disqualifying contractual relationship with those who did. Section 107(b)(3) provides that:

> (b) There shall be no liability under subsection (a) of this section for a person otherwise liable who can establish by a preponderance of the evidence that the release or threat of release of a hazardous substance and the damages resulting therefrom were caused solely by . . .
>
> (3) an act or omission of a third party other than an employee or agent of the defendant, or than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly with the defendant . . . if the defendant establishes by a preponderance of the evidence that (a) he exercised due care with respect to the hazardous substance concerned,

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already in the soil and groundwater of the site before Aerojet's subsidiary acquired the property in 1977. The question, then, is whether natural migration of contaminants already released into the environment amounts to new "disposal." As the Second Circuit noted in *ABB*, such a broad reading of the term would effectively eliminate other provisions in the statute.

> taking into consideration the characteristics of such hazardous substance, in light of all relevant facts and circumstances, and (b) he took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions. . . .

42 U.S.C. § 9607(b). Aerojet and its subsidiaries meet each of the requirements of this defense because Aerojet and its subsidiaries (1) did not cause contamination at the site; (2) did not have a disqualifying contractual relationship with those who did; and (3) did conduct themselves reasonably at the site consistent with the Stipulation and Consent Order with the State of Michigan. The Sixth Circuit has instructed the trial court to reconsider the applicability of this defense on remand. *United States v. Cordova Chemical Co. of Michigan*, 113 F.3d 572, 583 (6th Cir. 1997) (*en banc*) (U.S. Pet. App. 23a-24a). Accordingly, even if all other issues were resolved adversely to Aerojet, the judgment of the Sixth Circuit in favor of Aerojet should still stand.

c. Petitioner asserts that an important purpose of CERCLA is to relieve the taxpaying public of the burden of bearing cleanup costs at polluted sites. Indeed, Petitioner asserts that "this case illustrates precisely why" parent corporations should be subject to liability as operators in some cases—to avoid situations in which "the general public must assume the costs of cleanup." U.S. Pet. at 27. But the facts of this case belie such a characterization as to Aerojet because a taxpaying public will ultimately bear the cost even if Aerojet is deemed liable. The Michigan Court of Appeals has ruled that the State of Michigan must reimburse Aerojet and its subsidiaries for any CERCLA liability they incur. *Cordova Chemical Co. v. Department of Natural Resources*, 212 Mich. App.

144, 536 N.W. 2d 862 (1995), *lv. denied*, 453 Mich. 899, 554 N.W.2d 319 (1996). Thus, it is taxpayers who will bear ultimate financial responsibility for any liability assigned to Aerojet and its subsidiaries. As such, review by this Court of the claims against Aerojet cannot advance the very policy Petitioner claims to advance with its Petition.

3. This Court should in any event deny the Conditional Cross-Petition of CPC International because CPC has no proper interest in seeking review of a judgment in favor of Aerojet and against the State of Michigan that the State itself is content to accept. A party must generally assert only its own legal rights, not those of other parties. *See Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 474-75 (1981); *Maryland v. Joseph H. Munson Co.*, 467 U.S. 947 (1984). A party must also have a sufficient personal stake in the outcome of a controversy to warrant its invocation of the Court's jurisdiction. *See Warth v. Seldin*, 422 U.S. 490 (1975). CPC's only asserted interest in seeking review of this issue as to Aerojet is to advance its claim for contribution against Aerojet. But CPC chose to abandon that claim in this litigation based on a partial settlement with Aerojet. *See* Stipulation and Order (April 15, 1992) at ¶ 6, Mich. Pet. App. 83a ("Since Aerojet-General Corp. and CPC International Inc. have reached a voluntary settlement that allocates past response costs between them, this Stipulation and Order constitutes a disposition of all legal and factual issues before the Court in phase II of the consolidated action."). Accordingly, the district court dismissed all claims between CPC and Aerojet in this case without prejudice. *See* Final Judgment (September 10, 1992) at ¶ 8 (Mich. Pet. App. 80a-81a). CPC may now regret its earlier decision to abandon its contribution claims in this case, but that regret does not create a proper basis for this Court to review a

judgment between Aerojet and the State of Michigan that both Aerojet and the State are content to accept.

CONCLUSION

The Petition for Writ of Certiorari filed by the United States (No. 97-454) should be denied. Alternatively, even if the Court decides to grant this petition, it should do so only with respect to the claims against CPC. The Court should further deny the Conditional Cross-Petition of CPC (No. 97-464).[8]

November 10, 1997

Respectfully submitted,

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[8] No relief is sought against Aerojet or its subsidiaries in the Petition of MDNR (No. 97-296).

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